Supreme Court, U.S.
FILED
MAY - 6 2002
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(18) (15)

Nos. 01-653, 01-657

In the Supreme Court of the United States

FEDERAL COMMUNICATIONS COMMISSION, PETITIONER

v.

NEXTWAVE PERSONAL COMMUNICATIONS INC., ET AL., RESPONDENTS

ARCTIC SLOPE REGIONAL CORP., ET AL., PETITIONERS

v.

NEXTWAVE PERSONAL COMMUNICATIONS INC., ET AL., RESPONDENTS

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOINT APPENDIX

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PETITIONS FOR WRIT OF CERTIORARI FILED: OCT. 19, 2001
CERTIORARI GRANTED: MAR. 4, 2002

72pp

TABLE OF CONTENTS

	Page
United States Court of Appeals for the District of Columbia Circuit, Docket Entries for NextWave Personal Communications, et al., Petitioners v. Federal Communications Commission, et al., Respondents, No. 00-1402	1
United States Court of Appeals for the District of Columbia Circuit, Docket Entries for NextWave Personal Communications, et al., Petitioners v. Federal Communications Commission, et al., Respondents, No. 00-1403	33
Proof of Claim	34
Declaration of Frank A. Cassou in Support of NextWave's Motion for a Stay Pending Judicial Review or for Expedited Consideration	37
Objection of Federal Communications Commission to Debtors' Modified First Amended Joint Plan of Reorganization	52
Letter to Chairman W.J. Tauzin, Subcommittee on Telecommunications, Trade, and Consumer Protection, Committee on Commerce, U.S. House of Representatives	55
Letter to Cady Thomas, Office of the Hon. Senator Jesse Helms	59
Letter to the Hon. J. Dennis Hastert, The Speaker, U.S. House of Representatives	63
Letter to Magalie Salas, Secretary, Federal Communications Commission	66
Letter to Michael R. Wack, V.P. Regulation, NextWave Telecom Inc.	69

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DOCKET NO. 00-1402

NEXTWAVE PERSONAL COMMUNICATIONS, ET AL.,
PETITIONERS

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,
RESPONDENTS

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
9/15/00	PETITION FOR REVIEW CASE docketed. Petition for Review filed by Petitioner NextWave Prsnal Comm, Petitioner NextWave Power Prt. [544554-1] (lme) [00-1402]
9/15/00	STATEMENT filed by Petitioner NextWave Prsnal Comm, Petitioner NextWave Power Prt pursuant to FRAP 26.1 providing corporate disclosure listing [545060-1] Certificate of Service date 9/15/00 (lme) [00-1402]
9/21/00	CLERK'S ORDER filed to consolidate cases [545165-1]. [Entry Date: 9/21/00] [00-1402, 00-1403] (lme) [00-1402 00-1403]

DATE	PROCEEDINGS
9/21/00	CLERK'S ORDER filed directing Petitioner to file [545167-1]: docketing statement due 10/23/00 for NextWave Power Prt in 00-1402; certificate of counsel due 10/23/00 for NextWave Power Prt in 00-1402; statement of issues due 10/23/00 for NextWave Power Prt in 00-1402, for Theodore B. Olson in 00-1403; any procedural motions due 10/23/00 for NextWave Power Prt in 00-1402; deferred appendix notice due 10/23/00 for NextWave Power Prt in 00-1402; any dispositive motions due 11/6/00 for NextWave Power Prt in 00-1402;, directing Respondent to file [545167-2]: any procedural motions due 10/23/00 for USA in 00-1402; appearance form due 11/6/00 for FCC in 00-1402; certified index to the record due 11/6/00 for FCC in 00-1402; any dispositive motions due 11/6/00 for FCC in 00-1402;. [Entry Date: 9/21/00] [00-1402, 00-1403] (lme) [00-1402 00-1403]
9/25/00	MOTION filed (5 copies) (certificate of service dated 9/25/00) to allow to intervene in support of respondent [546242-1]. Motion filed by BellSouth Corp in 00-1402, BellSouth Cell Corp in 00-1402. (mcm) [00-1402]

DATE	PROCEEDINGS
9/25/00	STATEMENT filed by Movant-Intervenor-Respondent BellSouth Corp in 00-1402, Movant-Intervenor-Respondent BellSouth Corp in 00-1402 pursuant to FRAP 26.1 providing corporate disclosure listing [546243-1] Certificate of Service date 9/25/00 (mcm) [00-1402]
9/26/00	MOTION filed (5 copies) by Petitioners NextWave Prsnal Comm and NextWave Power Prt in 00-1402 and 00-1403 (certificate of service dated 9/26/00) for stay of order of agency [546391-1] Response due on 10/6/00 in 00-1402, in 00-1403 or to expedite case [546391-2]. [00-1402, 00-1403] (mam) [00-1402 00-1403]
9/27/00	MOTION filed (5 copies) (certificate of service dated 9/27/00) to allow to intervene [548078-1]. Motion filed by Cellco Prtnshp in 00-1402 (mcm) [00-1402]
9/27/00	STATEMENT filed by Movant-Intervenor Cellco Prtnshp in 00-1402 pursuant to FRAP 26.1 providing corporate disclosure listing [548079-1] Certificate of Service date 9/27/00 (mcm) [00-1402]

DATE	PROCEEDINGS
9/29/00	MOTION filed (5 copies) (certificate of service dated 9/28/00) to allow amicus curiae [547131-1]. Motion filed by Kenneth N. Klee in 00-1402, 00-1403. [00-1402, 00-1403] (mcm) [00-1402 00-1403]
10/2/00	RESPONSE lodged [547138-1] (5 copies) by Movant-AmicusCuriae-Petitioner Kenneth N. Klee in 00-1402, Movant-AmicusCuriae-Petitioner Kenneth N. Klee in 00-1403 (certificate of service dated 9/28/00) to a motion stay case [546391-1] and to a motion expedite case [546391-2] in 00-1402 and 00-1403. [00-1402, 00-1403] (mcm) [00-1402 00-1403]
10/3/00	MOTION filed (5 copies) (certificate of service dated 10/3/00) to allow to intervene [549648-1]. Motion filed by VoiceStream Wireless in 00-1402 (mam) [00-1402]
10/3/00	STATEMENT filed by Movant-Intervenor VoiceStream Wireless in 00-1402 pursuant to FRAP 26.1 providing corporate disclosure listing [549665-1] Certificate of Service date 10/3/00 (attached to petition for review) (mam) [00-1402]

DATE	PROCEEDINGS
10/3/00	MOTION filed (5 copies) (certificate of service dated 10/3/00) to allow to intervene [549666-1]. Motion filed by AT&T Wireless Svc in 00-1402 (mam) [00-1402]
10/3/00	STATEMENT filed by Movant-Intervenor AT&T Wireless Svc in 00-1402 pursuant to FRAP 26.1 providing corporate disclosure listing [549672-1] Certificate of Service date 10/3/00 (attached to motion to intervene) (mam) [00-1402]
10/4/00	MOTION filed (5 copies) (certificate of service dated 10/4/00) to allow to intervene [549673-1] in support of respondent . Motion filed by Cell Telecom Indust in 00-1402 (mam) [00-1402]
10/4/00	STATEMENT filed by Movant-Intervenor-Respondent Cell Telecom Indust in 00-1402 pursuant to FRAP 26.1 providing corporate disclosure listing [549676-1] Certificate of Service date 10/4/00 (mam) [00-1402]
10/5/00	MOTION filed (5 copies) (certificate of service dated 10/5/00) to allow to intervene [549683-1] in support of respondent. Motion filed by Dobson Comm Corp in 00-1402 (mam) [00-1402]

DATE	PROCEEDINGS
10/5/00	STATEMENT filed by Movant-Intervenor-Respondent Dobson Comm Corp in 00-1402 pursuant to FRAP 26.1 providing corporate disclosure listing [549688-1] Certificate of Service date 10/5/00 (mam) [00-1402]
10/5/00	MOTION filed (5 copies) (certificate of service dated 10/5/00) to allow to intervene [549689-1] in support of respondents. Motion filed by Sprint Spectrum in 00-1402 (mam) [00-1402]
10/5/00	STATEMENT filed by Movant-Intervenor-Respondent Sprint Spectrum in 00-1402 pursuant to FRAP 26.1 providing corporate disclosure listing [549690-1] Certificate of Service date 10/5/00 (attached to motion to intervene) (mam) [00-1402]
10/6/00	OPPOSITION filed [549623-1] (5 copies) by Respondent FCC in 00-1402 and 00-1403 (certificate of service dated 10/6/00) to a motion stay case [546391-1], or to expedite in 00-1402 and 00-1403 [00-1402, 00-1403] (mam) [00-1402 00-1403]
10/6/00	MOTION filed (5 copies) (certificate of service dated 10/6/00) to allow to intervene [549692-1] in support of respondent. Motion filed by TeleCorp PCS Inc in 00-1402 (mam) [00-1402]

DATE	PROCEEDINGS
10/6/00	STATEMENT filed by Movant-Intervenor-Respondent TeleCorp PCS Inc in 00-1402 pursuant to FRAP 26.1 providing corporate disclosure listing [549693-1] Certificate of Service date 10/6/00 (attached to motion to intervene) (mam) [00-1402]
10/6/00	MOTION filed (5 copies) (certificate of service dated 10/6/00) to allow to intervene [549694-1]. Motion filed by Nextel Comm Inc in 00-1402 (mam) [00-1402]
10/6/00	STATEMENT filed by Movant-Intervenor Nextel Comm Inc in 00-1402 pursuant to FRAP 26.1 providing corporate disclosure listing [549695-1] Certificate of Service date 10/6/00 (attached to motion to intervene) (mam) [00-1402]
10/6/00	MOTION filed (5 copies) (certificate of service dated 10/6/00) to allow to intervene [549696-1]. Motion filed by Arctic Slope Regn in 00-1402 (mam) [00-1402]
10/6/00	STATEMENT filed by Movant-Intervenor Arctic Slope Regn in 00-1402 pursuant to FRAP 26.1 providing corporate disclosure listing [549697-1] Certificate of Service date 10/6/00 (mam) [00-1402]

DATE	PROCEEDINGS
10/6/00	MOTION filed (5 copies) (certificate of service dated 10/6/00) to allow to intervene [549698-1]. Motion filed by Cncl Tree Comm in 00-1402 (mam) [00-1402]
10/6/00	STATEMENT filed by Movant-Intervenor Cncl Tree Comm in 00-1402 pursuant to FRAP 26.1 providing corporate disclosure listing [549700-1] Certificate of Service date 10/6/00 (mam) [00-1402]
10/6/00	OPPOSITION lodged [549702-1] (5 copies) by Movant-Intervenor Arctic Slope Regn and Cncl Tree Comm in 00-1402 (certificate of service dated 10/6/00) to a motion stay case [546391-1] and to expedite [546391-2] . (mam) [00-1402]
10/6/00	OPPOSITION lodged [549704-1] (5 copies) by Movant-Intervenor-Respondent Cell Telecom Indust in 00-1402 (certificate of service dated 10/6/00) to a motion stay case [546391-1] and to expedite. (mam) [00-1402]

DATE	PROCEEDINGS
10/16/00	REPLY filed [550534-1] (5 copies) by Petitioners NextWave Prsnal Comm and NextWave Power Prt in 00-1402 and 00-1403 (certificate of service dated 10/16/00) to a response to the motion stay case [546391-1] or to expedite in 00-1402 and 00-1403 [00-1402, 00-1403] (mam) [00-1402 00-1403]
10/17/00	MOTION filed (5 copies) by Respondent FCC in 00-1402 and 00-1403 (certificate of service dated 10/17/00) to strike [550590-1] attachments to petitioners' reply to responses to motion for stay [550534-1] in 00-1402 and 00-1403 . [00-1402, 00-1403] (mam) [00-1402 00-1403]
10/17/00	OPPOSITION filed [550597-1] (5 copies) by Petitioners NextWave Prsnal Comm and NextWave Power Prt in 00-1402 and 00-1403 (certificate of service dated 10/17/00) to a motion strike document [550590-1] in 00-1402 and 00-1403 [00-1402, 00-1403] (mam) [00-1402 00-1403]
10/18/00	REPLY filed [552795-1] (5 copies) by Respondent FCC in 00-1402 and 00-1403 (certificate of service dated 10/18/00) to a response to the motion strike document [550590-1] in 00-1402 and 00-1403 [00-1402, 00-1403] (mam) [00-1402 00-1403]

DATE	PROCEEDINGS
10/23/00	INITIAL SUBMISSIONS filed by Petitioner NextWave Prsnal Comm in 00-1402, Petitioner NextWave Power Prt in 00-1402, Appellant NextWave Power Prt in 00-1403, Appellant NextWave Prsnal Comm in 00-1403 [551942-1] : docketing statement; certificate of counsel; statement of issues; deferred appendix notice (Deferred Appendix needed = n); . [00-1402, 00-1403] (mpt) [00-1402 00-1403]
10/24/00	LETTER filed by FCC in 00-1402 and 00-1403 pursuant to FRAP 28j advising of additional authorities [552698-1]. Certificate of service date 10/24/00. [00-1402, 00-1403] (mam) [00-1402 00-1403]
10/25/00	CLERK'S ORDER filed granting non-party motion to allow amicus filed by Kenneth N. Klee in 00-1402, in 00-1403. The Clerk is directed to file the lodged response of amicus curiae [547138-1]. [Entry Date: 10/25/00] [00-1402, 00-1403] (mcm) [00-1402 00-1403]
10/25/00	PER ABOVE ORDER lodged response [547138-1] in 00-1402, response [547138-1] in 00-1403 is filed. [00-1402, 00-1403] (mcm) [00-1402 00-1403]

DATE	PROCEEDINGS
10/25/00	LETTER filed by NextWave in 00-1402 and 00-1403 pursuant to FRAP 28j advising of additional authorities [552688-1] . Certificate of service date 10/25/00. [00-1402, 00-1403] (mam) [00-1402 00-1403]
10/26/00	ENTRY OF APPEARANCE filed by Attorney Stanley R. Scheiner for Respondent FCC in 00-1402, Daniel McMullen Armstrong for Respondent FCC in 00-1402, Christopher J. Wright for Respondent FCC in 00-1402 [552897-1] . (lme) [00-1402]
10/26/00	ENTRY OF APPEARANCE filed by Attorney Stewart Allen Block for Respondent FCC in 00-1402 [552901-1]. (lme) [00-1402]
11/3/00	LETTER filed by Petitioner NextWave Prsnal Comm in 00-1402 and 00-1403 pursuant to FRAP 28j advising of additional authorities [556001-1]. Certificate of service date 11/3/00. [00-1402, 00-1403] (mam) [00-1402 00-1403]
11/6/00	INITIAL SUBMISSIONS filed by Respondent FCC in 00-1402 [555323-1]: certified index to the record. (lme) [00-1402]

DATE	PROCEEDINGS
11/7/00	MOTION (styled "emergency motion to expedite briefing schedule and consideration of this case") filed (5 copies) by Respondent FCC in 00-1402, Appellee FCC in 00-1403 (certificate of service dated 11/7/00) to expedite case [556009-1]. [00-1402, 00-1403] (mam) [00-1402 00-1403]
11/9/00	RESPONSE filed [556119-1] (5 copies) by Petitioner NextWave Prsnal Comm in 00-1402, Petitioner NextWave Power Prt in 00-1402, Appellant NextWave Power Prt in 00-1403, Appellant NextWave Prsnal Comm in 00-1403 (certificate of service dated 11/9/00) to the FCC's emergency motion to expedite briefing and consideration of this case. [00-1402, 00-1403] (mcm) [00-1402 00-1403]
11/9/00	REPLY filed [556125-1] (5 copies) by Respondent FCC in 00-1402, Appellee FCC in 00-1403 (certificate of service dated 11/9/00) to the response of Nextwave to the emergency motion to expedite briefing and consideration of this case. [00-1402, 00-1403] (mcm) [00-1402 00-1403]

DATE	PROCEEDINGS
11/13/00	CLERK'S ORDER filed granting non-party motion to intervene filed by TeleCorp PCS Inc [549692-1] granting non-party motion to intervene filed by Nextel Comm Inc [549694-1] granting non-party motion to intervene filed by Arctic Slope Regn [549696-1] granting non-party motion to intervene filed by Cncl Tree Comm [549698-1] granting non-party motion to intervene filed by Dobson Comm Corp [549683-1] granting non-party motion to intervene filed by Sprint Spectrum [549689-1] granting non-party motion to intervene filed by Cell Telecom Indust [549673-1] granting non-party motion to intervene filed by VoiceStream Wireless [549648-1] granting non-party motion to intervene filed by AT&T Wireless Svc [549666-1] granting non-party motion to intervene filed by Cellco Prtnshp [548078-1] granting non-party motion to intervene filed by BellSouth Corp, BellSouth Cell Corp [546242-1]. [Entry Date: 11/13/00] (mam) [00-1402]
11/13/00	PER CURIAM ORDER filed denying motion stay case [546391-1]i; dismissing motion to strike attachments as moot and establishing briefing schedule and format: Petitioner's brief due on 12/11/00 in 00-1402, in 00-1403 ; Petitioner's appendix due on 12/11/00 in 00-

DATE	PROCEEDINGS
	1402 ; Intervenor supporting Petitioner's brief due 12/18/00 in 00-1402; Amicus Curiae's brief due on 12/18/00 in 00-1402; Respondent's brief due on 1/17/01 in 00-1402; Intervenor supportg Respondent's brief due 1/24/01 in 00-1402; Petitioner's reply brief due on 1/31/01 in 00-1402, in 00-1403. All amici Curiae and intervenors supporting a particular party shall join in a single brief not exceeding 8,750 wds. Before Judges Ginsburg, Tatel, Garland. [Entry Date: 11/13/00] [00-1402, 00-1403] (mam) [00-1402 00-1403]
11/13/00	PER ABOVE ORDER lodged responses [549702-1], [549704-1] are filed. (mcm) [00-1402]
11/20/00	CLERK'S ORDER filed to schedule oral argument [557229-1] before Judge Initials: DBS DST MBG on 3/15/01 at 9:30 AM . [Entry Date: 11/20/00] [00-1402, 00-1403] (cwc) [00-1402 00-1403]
12/11/00	JOINT APPENDIX (volume I and II) filed by Petitioners NextWave Prsnal Comm in 00-1402, and NextWave Power Prt in 00-1402, 00-1403, [562007-1]. Copies: 10. Certificate of service date 12/11/00. [00-1402, 00-1403] (mpt) [00-1402 00-1403]

DATE	PROCEEDINGS
12/11/00	BRIEF filed by Petitioners NextWave Prsnal Comm NextWave Power Prt in 00-1402 [562085-1]. Copies: 15 . Certificate of service date 12/11/00. [00-1402, 00-1403] (mpt) [00-1402 00-1403]
12/19/00	MOTION lodged (5 copies) (certificate of service dated 12/18/00) to allow amicus curiae [563727-1]. Motion submitted by Movant-AmicusCuriae-Petitioner Robert E. Torricelli, Movant-AmicusCuriae-Petitioner Charles Schumer, Movant-Amicus Curiae-Petitioner John Conyers, Movant-AmicusCuriae-Petitioner Jarrold Nadler, Movant-AmicusCuriae-Petitioner Lindsey Graham, Movant-AmicusCuriae-Petitioner Offcl Com Unsec Crdt, Movant-Amicus Curiae-Petitioner D&P NextWave Prt, Amicus Curiae for Petitioner Kenneth N. Klee in 00-1402 and 00-1403. [00-1402, 00-1403] (mcm) [00-1402 00-1403]
12/19/00	BRIEF lodged by Amicus Curiae for Petitioner Kenneth N. Klee, Movant-Amicus Curiae-Petitioner Robert E. Torricelli, Movant-Amicus Curiae-Petitioner Charles Schumer, Movant-AmicusCuriae-Petitioner John Conyers, Movant-Amicus Curiae-Petitioner Jarrold Nadler, Movant-AmicusCuriae-Petitioner Lindsey Graham, Movant-AmicusCuriae-Petitioner

DATE	PROCEEDINGS
	Offcl Com Unsec Crdt, Movant-Amicus Curiae-Petitioner D&P NextWave Prt, Amicus Curiae for Petitioner Kenneth N. Klee, [563733-1]. Copies: 14. Certificate of service date 12/18/00. [00-1402, 00-1403] (mcm) [00-1402 00-1403]
12/20/00	Letter sent Attorney Non-Member letter. Application for admission - due 1/19/01 for Emanuel C. Grillo. sent: letter aty appl for adm [563780-1]. (mcm) [00-1402]
12/20/00	Letter sent Attorney Non-Member letter. Application for admission - due 1/19/01 for David Friedman. Documents sent: letter aty appl for adm [563786-1]. [ddl extended until 3/9/01] (mcm) [00-1402]
12/20/00	MOTION filed (5 copies) by Movant-Amicus Curiae-Petitioner Robert E. Torricelli, Charles E. Schumer, John Conyers, Jerrold Nadler, Lindsey Graham, Offcl Com Unsec Crdt and D&P NextWave Prt in 00-1402 and 00-1403 (certificate of service dated 12/20/00) for leave to file [564354-1] a non-party motion to allow amicus out of time and a brief in 00-1402 and 00-1403. [00-1402, 00-1403] (mam) [00-1402 00-1403]

DATE	PROCEEDINGS
12/26/00	CLERK'S ORDER filed granting motion for leave to file a motion to participate as amicus curiae filed by Robert E. Torricelli, Charles E. Schumer, John Conyers Jr., Jerrold Nadler, Lindsey Graham, Offcl Com Unsec Crdt, D&P NextWave Prt [564354-1]; Directing Clerk to file non-party motion to allow amicus [563727-1]; Granting non-party motion allow amicus; Directing Clerk to file the lodged brief. [563733-1] [Entry Date: 12/26/00] [00-1402, 00-1403] (cwc) [00-1402 00-1403]
12/26/00	PER ABOVE ORDER lodged non-party motion to allow amicus [563727-1] is filed. [00-1402, 00-1403] (cwc) [00-1402 00-1403]
12/26/00	PER ABOVE ORDER lodged brief of amicus curiae is filed. [563733-1] [00-1402, 00-1403] (cwc) [00-1402 00-1403]
1/17/01	SUPPLEMENTAL APPENDIX lodged by Respondent FCC in 00-1402, Appellee FCC in 00-1403 [569596-1]. Copies: 10. Certificate of date 1/17/01. [00-1402, 00-1403] (mpt) [00-1402 00-1403]

DATE	PROCEEDINGS
1/17/01	MOTION filed (5 copies) by Respondent FCC in 00-1402, and in 00-1403 (certificate of service dated 1/17/01) for leave to file [569603-1] a supplemental appendix [569596-1] in 00-1402 and 00-1403. (mpt) [00-1402 00-1403]
1/17/01	BRIEF filed by Respondents FCC in 00-1402 and 00-1403 and USA in 00-1402 [569664-1]. Copies: 15. Certificate of service date 1/17/01. [00-1402, 00-1403] (mam) [00-1402 00-1403]
1/23/01	MOTION filed (5 copies) by Intervenor Nextel Comm Inc in 00-1402 (certificate of service dated 1/23/01) to withdraw as a party-intervenor to the proceedings. (mcm) [00-1402]
1/24/01	BRIEF filed by Intervenor for Respondent BellSouth Corp in 00-1402, Intervenor for Respondent BellSouth Cell Corp in 00-1402, Intervenor Cellco Prtnshp in 00-1402, Intervenor VoiceStream Wireless in 00-1402, Intervenor AT&T Wireless Svc in 00-1402, Intervenor for Respondent Cell Telecom Indust in 00-1402, Intervenor for Respondent Dobson Comm Corp in 00-1402, Intervenor for Respondent Sprint Spectrum in 00-1402 [571352-1]. Copies: 14. Certificate of service date 1/24/01.

DATE	PROCEEDINGS
	[REPLACED WITH CORRECTED BRIEF ON 1/25/01 -Id# 572310] (mcm) [00-1402]
1/25/01	CORRECTED BRIEF filed by Intervenor for Respondent BellSouth Corp in 00-1402, Intervenor for Respondent BellSouth Cell Corp in 00-1402, Intervenor Cellco Prtnshp in 00-1402, Intervenor VoiceStream Wireless in 00-1402\ Intervenor AT&T Wireless Svc in 00-1402, Intervenor for Respondent Cell Telecom Indust in 00-1402, Intervenor for Respondent Dobson Comm Corp in 00-1402, Intervenor for Respondent Sprint Spectrum in 00-1402 [572310-1]. Copies: 14. Certificate of date 1/25/01. [REPLACES BRIEF FILED ON 1/24/01 - ID# 571352] (mcm) [00-1402]
1/26/01	CLERK'S ORDER filed granting motion filed by Nextel Comm Inc to withdraw [571778-1]; Clerk to note the docket to reflect the withdrawal of Nextel Comm Inc as an intervenor. [Entry Date: 1/26/01] [00-1402, 00-1403] (cwc) [00-1402 00-1403]
1/31/01	REPLY BRIEF filed by Petitioners NextWave Prsnal Comm and NextWave Power Prt in 00-1402 and 00-1403 [573909-1]. Copies: 15. Certificate of service date 1/31/01. [00-1402, 00-1403] (mam) [00-1402 00-1403]

DATE	PROCEEDINGS
2/9/01	CLERK'S ORDER filed granting motion leave to file. [569603-1] Directing the Clerk to file the lodged supplemental appendix. [569596-1] [Entry Date: 2/9/01] [00-1402, 00-1403] (lej) [00-1402 00-1403]
2/9/01	Per Above Order lodged supplemental appendix [569596-1] is filed. [00-1402, 00-1403] (lej) [00-1402 00-1403]
2/26/01	PER CURIAM ORDER filed to allocate oral argument times: APET minutes- 15 ERES minutes-15; Petitioners may elect to share argument time with amicus curiae and respondents may elect to share time with intervenors. [578149-1], Form 72 notice of attorney arguing case - [578149-2] due 3/8/01. [Entry Date: 2/26/01] [00-1402, 00-1403] (cwc) [00-1402 00-1403]
2/26/01	SUPPLEMENT (Errata) to [578988-1] appellee/respondent brief [569664-1] filed by Respondent FCC in 00-1402, Appellee FCC in 00-1403. Errata consists of correction to citation. [00-1402, 00-1403] (mcm) [00-1402 00-1403]
3/1/01	LETTER filed by Respondent FCC in 00-1402 pursuant to FRAP 28j advising of additional authorities (report to Congress) [579886-1]. Certificate of service date 3/1/01. (mcm) [00-1402]

DATE	PROCEEDINGS
3/1/01	FORM 72 filed by Attorney Richard Gray Taranto [580086-1] on behalf of intervenors Cellular Tele Ind Assn, et al. [580086-2] . [00-1402, 00-1403] (cwc) [00-1402 00-1403]
3/5/01	FORM 72 filed by Attorney Daniel McMullen Armstrong on behalf of appellee FCC [580220-1] [580220-2]. [00-1402, 00-1403] (cwc) [00-1402 00-1403]
3/7/01	FORM 72 filed by Attorney Theodore B. Olson on behalf of petitioners NextWave, et al. [580884-1] [580884-2]. [00-1402, 00-1403] (cwc) [00-1402 00-1403]
3/8/01	RESPONSE filed [585884-1] (5 copies) by Petitioners NextWave Prsnal Comm and NextWave Power Prt (certificate of service dated 3/7/01) to a motion leave to file [584873-1] [00-1402, 00-1403] (cwc) [00-1402 00-1403]
3/15/01	ORAL ARGUMENT HELD before Sentelle, Tatel, Garland. [00-1402, 00-1403] (sll) [00-1402 00-1403]

DATE	PROCEEDINGS
3/21/01	RESPONSE (styled "post-argument memorandum) lodged [584872-1] (5 copies) by Respondent FCC in 00-1402 to questions concerning issue raised at oral argument (certificate of service dated 3/21/01) (mam) [00-1402]
3/21/01	MOTION filed (5 copies) by Respondent FCC in 00-1402 (certificate of service dated 3/21/01) for leave to file [584873-1] a response [584872-1]. (mam) [00-1402]
3/22/01	LETTER filed by Respondent FCC in response to a question raised at oral argument [585083-1]. Certificate of service date 3/22/01. [00-1402, 00-1403] (cwc) [00-1402 00-1403]
3/27/01	RESPONSE lodged [585979-1] (5 copies) by Petitioners NextWave Prsnal Comm et al. in 00-1402 and Appellants NextWave Power Prt et al. in 00-1403 (certificate of service dated 3/27/01) to FCC's post argument memorandum. [00-1402, 00-1403] (mam) [00-1402 00-1403]

DATE	PROCEEDINGS
3/27/01	OPPOSITION filed [585980-1] (5 copies) by Petitioners NextWave Prsnal Comm et al. in 00-1402 and Appellants NextWave Power Prt et al. in 00-1403 (certificate of service dated 3/27/01) to a motion leave to file [584873-1] a post-argument memorandum, or, in the alternative MOTION filed, for leave to file [585980-2] a response to the post-argument memorandum. [00-1402, 00-1403] (mam) [00-1402 00-1403]
4/4/01	TRANSCRIPT of oral argument held on 3/15/01. [545011-1] [00-1402, 00-1403] (mcm) [00-1402 00-1403]
4/26/01	LETTER filed by appellee FCC pursuant to FRAP 28j advising of additional authorities [592601-1]. Certificate of service date 4/25/01. [00-1402, 00-1403] (cwc) [00-1402 00-1403]
5/31/01	NOTICE (in letter form) filed by Petitioners NextWave Prsnal Comm and NextWave Power Prt in 00-1402 and Appellants NextWave Power Prt and NextWave Prsnal Comm in 00-1403 that Mr. Hungar is replacing Mr. Olson as counsel of record. Mr. Olson is joining the Department of Justice. Certificate of service date 5/29/01. [00-1402, 00-1403] (mam) [00-1402 00-1403]

DATE	PROCEEDINGS
6/22/01	JUDGMENT reversing [605020-1] and remanding case to the FCC [605020-2] for proceedings not inconsistent with accompanying opinion. Before Judges Sentelle, Tatel, Garland. [Entry Date: 6/22/01] [00-1402, 00-1403] (deb) [00-1402 00-1403]
6/22/01	OPINION [605021] (40 pgs) for the Court filed by Judge Tatel. [00-1402, 00-1403] (deb) [00-1402 00-1403]
6/22/01	CLERK'S ORDER filed [605022] directing Clerk to withhold issuance of the mandate [605022-1] pending disposition of any timely petition for rehearing. [Entry Date: 6/22/01] [00-1402, 00-1403] (deb) [00-1402 00-1403]
6/28/01	PER CURIAM ORDER filed [606330] granting motion of respondent FCC for elave [*sic*] to file a post-argument memorandum and granting petitioners' alternative motion for leave to file a response; Clerk directed to file the lodged post-argument memorandum and response. [585980-2] [584873-1] [585979-1] [584872-1] Before Judges Sentelle, Tatel, Garland [Entry Date: 6/28/01] [00-1402, 00-1403] (cwc) [00-1402 00-1403]

DATE	PROCEEDINGS
6/28/01	PER ABOVE ORDER lodged post-argument memorandum and response are filed [585979-1] [584872-1] [00-1402, 00-1403] (cwc) [00-1402 00-1403]
7/5/01	FIRST CLASS MAIL [610241-1] RETURNED marked unknown mark. Mail was in response to a Per Curiam opinion [605021-1]. (lme) [00-1402]
7/17/01	FIRST CLASS MAIL [610249-1] RESENT of Per Curiam opinion writing judge on opinion [605021-1]. Reason mail resent: I'm resending the mail back to the same address because the reason why they sent it back was unknown. (lme) [00-1402]
8/6/01	MOTION filed (5 copies) by Respondent FCC in 00-1402, Appellee FCC in 00-1403 (certificate of service dated 8/6/01 service by hand to NextWave) to stay issuance of the mandate. [00-1402, 00-1403] (mam) [00-1402 00-1403]
8/16/01	OPPOSITION filed [618339-1] (5 copies) by Petitioners NextWave Prsnal Comm and NextWave Prsnal Comm in 00-1402 and 00-1403 (certificate of service dated 8/16/01 [FCC was served by hand]) to a motion stay mandate [616433-1] in 00-1402 00-1403 [00-1402, 00-1403] (mam) [00-1402 00-1403]

DATE	PROCEEDINGS
8/17/01	SUPPLEMENT to [619406-1] motion stay mandate [616433-1] filed by Petitioner NextWave Prsnal Comm in 00-1402, Petitioner NextWave Power Prt in 00-1402. Declaration from Robert Symington, which was attached as Exhibit C. (lme) [00-1402]
8/22/01	REPLY filed [620387-1] (5 copies) by Respondent FCC in 00-1402 and 00-1403 (certificate of service dated 8/22/01) to response to motion to stay mandate [00-1402, 00-1403] (mam) [00-1402 00-1403]
8/23/01	PER CURIAM ORDER filed [619678] denying motion stay mandate [616433-1] filed by FCC. In order to obtain a stay of the mandate pending a petition for writ of certiorari, the FCC must show that the "petition would present a substantial question and that there is good cause for a stay." The FCC has not demonstrated that the petition would present a substantial question. Furthermore, in light of petitioners' stipulation that they will make the effectiveness of their plan of reorganization contingent upon a final decision from the Supreme Court on the issues to be raised in the FCC's petition for writ of certiorari, the FCC cannot demonstrate that any substantial harm would result from the con-

DATE	PROCEEDINGS
	tinuation of the bankruptcy proceedings during the limited pendency of the certiorari petition. The clerk is directed to issue the mandate seven days from the date of this order. Before Judges Sentelle, Tatel, Garland. [Entry Date: 8/23/01] [00-1402, 00-1403] (mcm) [00-1402 00-1403]
8/30/01	MANDATE ISSUED to FCC [621396-1]. [00-1402, 00-1403] (mcm) [00-1402 00-1403]
9/4/01	FIRST CLASS MAIL [625860-1] RETURNED marked Return to sender Mail was in response an order denying motion to stay issuance of the mandate. [00-1402, 00-1403] (mpt) [00-1402 00-1403]
9/17/01	LETTER dated 9/13/01 received from S. Ct. advising that application for extension of time to file petition for writ of certiorari was presented to Chief Justice who on 9/13/01 extended time to and including 10/19/01. [626171-1] [S. Ct. Application No. 01A238]. Certificate of service date. [00-1402, 00-1403] (mam) [00-1402 00-1403]

DATE	PROCEEDINGS
9/17/01	LETTER dated 9/13/01 received from S. Ct. advising that application for extension of time to file petition for writ of certiorari was presented to Chief Justice who, on 9/12/01 extended time to 10/19/01. [626172-1] [S.Ct. Application No. 01A237] . Certificate of service date. [00-1402, 00-1403] (mam) [00-1402 00-1403]
9/17/01	LETTER dated 9/13/01 received from S. Ct. advising that motion to extend time to file petition for writ of certiorari was presented to Chief Justice who, on 9/13/01 extended the time to 10/19/01. [626174-1] [S. Ct. Application No. 01A239] . Certificate of service date.[00-1402, 00-1403] (mam) [00-1402 00-1403]
9/19/01	NOTICE filed by Francis Lorson, Chief Deputy Clerk, Supreme Court of the U.S., informing the court that on September 17, 2001, an application for extension of time to file a petition for writ of certiorari in case No. 01A248. On September 17, 2001, the Chief Justice extended the time to and including October 19, 2001 [626305-1]. [00-1402, 00-1403] (lvs) [00-1402 00-1403]

DATE	PROCEEDINGS
11/8/01	LETTER dated 10/22/01 received from Clerk's Office, S. Ct., advising that petition for a writ of certiorari was filed 10/19/01 and docketed on 10/19/01 as (S. Ct. No. 01-653). (mpt) [00-1402 00-1403]
11/8/01	LETTER dated 10/22/01 received from Clerk's Office, S. Ct., advising that petition for a writ of certiorari was filed 10/19/01 and docketed on 10/19/01 as (S. Ct. No. 01-654). (mpt) [00-1402 00-1403]
11/8/01	LETTER dated 10/23/01 received from Clerk's Office, S. Ct., advising that petition for a writ of certiorari filed 10/19/01 and docketed on 10/22/01 as (S. Ct. No. 01-657). (mpt) [00-1402 00-1403]
2/5/02	PETITION filed (5 copies) by Intervenor Cellco Prtnshp in 00-1402 (certificate of service dated 2/5/02) to enforce the mandate. [00-1402, 00-1403] (mam) [00-1402 00-1403]
2/15/02	OPPOSITION (styled "opposition to Verizon's [Cellco] petition to enforce mandate") filed [659893-1] (5 copies) by Respondent FCC to petition to enforce mandate. 00-1402 (certificate of service dated 2/15/02) (mam) [00-1402]

DATE	PROCEEDINGS
2/15/02	OPPOSITION filed [659899-1] (5 copies) by Intervenor Arctic Slope Regn in 00-1402 (certificate of service dated 2/15/02) to petition to enforce mandate. (mam) [00-1402]
2/15/02	ENTRY OF APPEARANCE filed by Attorney Jonathan Saul Franklin for Intervenor Cncl Tree Comm, Intervenor Arctic Slope Regn in 00-1402, Michele Clause Farquhar for Intervenor Cncl Tree Comm, Intervenor Arctic Slope Regn in 00-1402 [659910-1]. (mam) [00-1402]
2/20/02	LETTER dated 2/15/02 received from S. Ct. Clerk's Office transmitting copy of motion to dismiss petition for writ of certiorari and 2/15/02 S. Ct. order dismissing petition pursuant to Rule 46.2 of the Rules of the Supreme Court. [661606-1] [00-1402, 00-1403] (mam) [00-1402 00-1403]
2/22/02	SUPPLEMENT (amended certificate of service) [661496-1] to opposition [659893-1] lodged by Respondent FCC in 00-1402. (mam) [00-1402]

DATE	PROCEEDINGS
2/22/02	MOTION filed (5 copies) by Respondent FCC in 00-1402 (certificate of service dated 2/22/02) for leave to file [661499-1] a supplemental document (amended certificate of service) [661496-1]. (mam) [00-1402]
2/22/02	REPLY filed [661511-1] (5 copies) by Intervenor Cellco Prtnshp in 00-1402 (certificate of service dated 2/22/02) to opposition to petition to enforce mandate. (mam)
3/1/02	CLERK'S ORDER filed[662127] granting motion leave to file to file amended certificate of service to its opposition to petition to enforce the mandate [661499-1]. The Clerk is directed to file the lodged document. [Entry Date: 3/1/02] [00-1402, 00-1403] (mcm0 [00-1402 00-1403]
3/1/02	PER ABOVE ORDER lodged supplemental document [661496-1] in 00- 1402 is filed. [00-1402, 00-1403] (mcm) [00-1402 00-1403]

DATE	PROCEEDINGS
3/1/02	PER CURIAM ORDER filed [662132] denying petition enforce mandate [656520-1] filed by cellco Prtshp. The relief sought by the petition does not fall within the court's mandate. Accordingly, the court has not reached the substantive merits of the petition. Before Judge Sentelle, Tatel, Garland. [Entry Date: 3/1/02] [00-1402, 00-1403]
3/8/02	LETTER dated 3/8/02 rec'd from Clerk of the Supreme Court [664591-1] (Sumpreme Court No. 01-653). The motion of Urban Comm-North Carolina, Inc., for leave to file a brief as amicus curiae is granted. The petition for writ of certiorari is granted. The cases are consolidated and a total of one hour is allotted for oral argument. Certificate of service by mail dated 3/4/02. (Lme) [00-1402]
3/8/02	LETTER dated 03/04/02 rec'd from Clerk of the Supreme Court [664600-1] (Supreme Court No. 01-657). The petition for a writ of certiorari is granted. The cases are consolidated and a total of one hour is allotted for oral argument. Certificate of service by mail dated 3/4/02. (Lme) [00-1402]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DOCKET NO. 00-1403

NEXTWAVE PERSONAL COMMUNICATIONS, ET AL.,
PETITIONERS

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,
RESPONDENTS

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
9/15/00	NOTICE OF APPEAL CASE docketed. Notice of Appeal filed byAppellant Next-Wave Power Prt. [545017-1] (lme) [00-1403]
9/15/00	STATEMENT filed by Appellant Next-Wave Power Prt pursuant to FRAP 26.1 providing corporate disclosure listing [545051-1] Certificate of Service date 9/15/00 (lme) [00-1403].
9/21/00	CLERK'S ORDER filed to consolidate cases [545165-1]. [Entry Date: 9/21/00] [00-1402, 00-1403] (lme) [00-1402 00-1403]

[Cases consolidated. *See* Docket No. 00-1402.]

B10 (Official Form 10)
(Rev. 7/95)

United States Bankruptcy Court Southern District of New York	PROOF OF CLAIM
In re (Name of Debtor) Nextwave Personal Communications, Inc. and Nextwave Power Partners, Inc.	Case Number 98B21529 (ASH) Jointly Administered

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (The person or other entity to whom the debtor owes money or property) United States of America	☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. ☐ Check box if you have never received any notices from the bankruptcy court in this case. ☐ Check box if the address differs from the address on the envelope sent to you by the court.
Name and Address Where Notices Should be Sent SEE ATTACHMENT "A" Telephone No. SEE ATTACHMENT "A"	THIS SPACE IS FOR COURT USE ONLY
ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR: SEE ATTACHMENT "B"	Check here if this claim ☐ replaces ☐ amends a previously filed claim, dated:_____

1. BASIS FOR CLAIM
- ☐ Goods sold
- ☐ Services performed
- ☐ Money loaned
- ☐ Personal injury/wrongful death
- ☐ Taxes
- ☒ Other (Describe briefly)

Conditional grant of licenses to operate broadband personal communications services and related notes.

- ☐ Retiree benefits as defined in 11 U.S.C. § 1114(a)
- ☐ Wages, salaries, and compensation (Fill out below)

Your social security number_____
Unpaid compensation for services performed
from_____ (date) to _____ (date)

2. DATE DEBT WAS INCURRED	3. IF COURT JUDGMENT, DATE OBTAINED:
SEE ATTACHMENT "B"	

4. CLASSIFICATION OF CLAIM. Under the Bankruptcy Code all claims are classified as one or more of the following: (1) Unsecured nonpriority, (2) Unsecured Priority, (3) Secured. It is possible for part of a claim to be in one category and part in another.
CHECK THE APPROPRIATE BOX OR BOXES that best describe your claim and STATE THE AMOUNT OF THE CLAIM AT TIME CASE FILED.

☒ SECURED CLAIM $ 4,771,473,668.78 plus attorney fees & costs SEE ATTACHMENT "D"
Attach evidence of perfection of security interest
Brief Description of Collateral:
☐ Real Estate ☐ Motor Vehicle ☒ Other (Describe Briefly) SEE ATTACHMENT "C"
Amount of arrearage and other charges at time case filed included in secured claim above, if any $ _____

☐ UNSECURED NONPRIORITY CLAIM $ _____
A claim is unsecured if there is no collateral or lien on property of the debtor securing the claim or to the extent that the value of such property is less than the amount of the claim.

☐ UNSECURED PRIORITY CLAIM $ _____
Specify the priority of the claim.

- ☐ Wages, salaries, or commissions (up to $4000),* earned not more than 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier—11 U.S.C. § 507(a)(3)
- ☐ Contributions to an employee benefit plan—11 U.S.C. § 507(a)(4)
- ☐ Up to $1,800* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use—11 U.S.C. § 507(a)(6)
- ☐ Alimony, maintenance, or support owed to a spouse, former spouse, or child—11 U.S.C. § 507(a)(7)
- ☐ Taxes or penalties of governmental units—11 U.S.C. § 507(a)(8)
- ☐ Other—Specify applicable paragraph of 11 U.S.C. § 507(a)_____

*Amounts are subject to adjustment on 4/1/98 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

5. TOTAL AMOUNT OF CLAIM AT THE TIME CASE FILED: $ _____ (Unsecured) $ _____ (Secured) $ _____ (Priority) $ _____ (Total)

☐ Check this box if claim includes charges in addition to the principal amount of the claim. Attach itemized statement of all additional charges.

6. CREDITS AND SETOFFS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to debtor.

7. SUPPORTING DOCUMENTS: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, or evidence of security interests. If the documents are not available, explain. If the documents are voluminous, attach a summary.

8. TIME-STAMPED COPY: To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

THIS SPACE IS FOR COURT USE ONLY

Date	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)
12/16/98	Thomas M. Hellman, Deputy CFO

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

34

ATTACHMENT A

Notices should be sent to the following:

Daniel S. Alter
Edward A. Smith
Assistant United States Attorneys
Southern District of New York
100 Church Street, 19th Floor
New York, NY 10007

Stewart A. Block
David E. Horowitz
Office of General Counsel
Federal Communication Commission
445 12th Street S.W., 8th Floor
Washington, DC 20024

ATTACHMENT B

Debtor Nextwave Personal Communications Inc. became obligated to pay the winning bid price for each "C block" license for which it was the high bidder as of the date the C block auction closed on May 6, 1996, as set forth in the attached Public Notice. DA-96-716 (May 8, 1996). *See* 47 C.F.R. §1.2104(g)(2)(1996).

Debtor Nextwave Personal Communications Inc. became obligated to pay the winning bid price for each "C block" license for which it was the high bidder as of the date the C block "re-auction" closed on July 16, 1996, as set forth in the attached Public Notice. DA-96-1153 (July 17, 1996). *See* 47 C.F.R. §1.2104(g)(2)(1996).

Debtor Nextwave Power Partners, Inc. became obligated to pay the winning bid price for each "F block" license for which it was the high bidder as of the date the F block "re-auction" closed on January 14, 1997, as set forth in the attached Public Notice. DA-97-81 (January 15, 1997). *See* 47 C.F.R. §1.2104(g)(2)(1996).

The foregoing obligations so incurred were subsequently memorialized by the orders conditionally granting Debtors certain licenses, the condition on the face of the Licenses, and the Promissory Notes and Security Agreements executed by the Debtors, each of which is set forth in Attachment C. The Licenses, Promissory Notes and Security Agreements are submitted in this Proof of Claim only for the purpose of further memorializing the pre-existing obligations incurred at the close of the respective C block auction, C block re-auction, and F block auction as set forth above.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Case Nos. 00-1402; 00-1403

NEXTWAVE PERSONAL COMMUNICATIONS INC. AND NEXTWAVE POWER PARTNERS INC., APPELLANTS/PETITIONERS

v.

FEDERAL COMMUNICATIONS COMMISSION AND THE UNITED STATES OF AMERICA, APPELLEES/RESPONDENTS

DECLARATION OF FRANK A. CASSOU IN SUPPORT OF NEXTWAVE'S MOTION FOR A STAY PENDING JUDICIAL REVIEW OR FOR EXPEDITED CONSIDERATION

Frank A. Cassou, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am the Executive Vice President of Corporate Development and General Counsel of NextWave Personal Communications Inc., NextWave Partners Inc., NextWave Power Partners Inc., NextWave Wireless Inc., and NextWave Telecom Inc. (collectively, "NextWave"). I have served in this capacity since February 1996. Prior to joining NextWave, I was partner at the law firm of Cooley Godward Castro Huddleson and Tatum, where I represented telecommunications and technology companies for thirteen years.

2. As the Executive Vice President of Corporate Development and General Counsel of NextWave, I am familiar with and knowledgeable about the wireless industry and the business needs of NextWave.

3. I am submitting this declaration in support of the Motion of NextWave Personal Communications Inc., et al., for a Stay Pending Judicial Review of the order of the Federal Communications Commission (the "FCC" or the "Commission") denying NextWave's petitions for reconsideration of the cancellation of its licenses.

4. At the outset, it is important to understand the events preceding NextWave's filing of a bankruptcy petition of June 8, 1998. Originally formed in early 1995, following conclusion of the C Block auctions in 1996, NextWave epitomized the type of enterprise Congress envisioned when it provided for portions of the electromagnetic spectrum to be reserved for small businesses and entrepreneurs. Begun by a group of telecommunications executives, who included pioneers in wireless technological advancements, NextWave had flourished to become a substantial company that was aggressively building out its network and implementing a nationwide business plan.

5. The way the C Block Auction was set up, bidders had to be small companies (gross revenues of not more than $125 million in each of the preceding two years and total assets of not more than $500 million), but they also had to prove their financial capability to bid. To qualify to submit bids, prospective bidders had to deposit funds with the FCC to establish eligibility.

6. On December 1, 1995, NPCI deposited $79,225,000 with the FCC, qualifying it to submit bids

at the C block Auction for up licenses covering up to 180 million POPs.

7. At the conclusion of the C Block Auction, NextWave was declared high bidder for 63 licenses with a total bid amount of $4.74 billion. High bidders were required to place 5% cash deposits with the FCC within 5 days of being declared high bidder with an additional 5% due upon license grant.

8. NextWave's bids were in line with spectrum values implied by publicly traded comparables at the time, such Omnipoint Corporation.

9. Based in no small part on the market's excitement about NextWave's prospects and satisfaction with the value of the licenses NextWave bid for, NextWave succeeded in raising over $600 million to fund the amounts due the FCC and commence building of the network.

10. Having raised over $600 million, NextWave proceeded to arrange for the rest of the financing necessary to complete the buildout of its network. While several major Wall Street investment banks competitively sought the job of permanently financing the Company, the Company ultimately selected Merrill Lynch and Lehman Brothers to lead the Company's public financing efforts. These investment banks proceeded rapidly with the financing efforts, including filing documents with the SEC for such financing in June 1996.

11. Immediately following the C Block Auction, NextWave began the process of building out its network. As indicated above, the Company invested over $600 million in acquisition of its licenses and the build-out of its network. By early 1997, the Company's

payroll had grown to over 350 full-time employees and almost 300 contractors. NextWave recruited a team of seasoned and experienced executives from the telecommunications industry to build out of its wireless network, and established a blue chip Board of Directors. The team of NextWave founders also brought a demonstrated track record in establishing successful wireless businesses, as evidenced by their participation in the development and commercialization of CDMA, the leading digital technology used today in U.S. cellular and PCS wireless networks. The Company established 22 office locations around the country.

12. By mid-1997, NextWave was ready with 90% of the microwave links needed for the initial launch of service, had identified and pre-qualified thousands of cell sites, and had acquired seven switch sites. In total, more than 1,300 cell sites had been designed, over 300 site leases signed, and another 900 leases negotiated, with over 30% ready for build-out. NextWave was well underway toward putting its spectrum into immediate use.

13. NextWave expected an initial launch of commercial service in four markets by late 1997, including Washington, D.C., San Diego, Las Vegas and San Antonio markets where the Company had installed and operated network trial systems. In all, NextWave's team of over 100 engineers completed network engineering designs for 22 of NextWave's major markets, including New York, Los Angeles, Chicago, Washington/Baltimore and Boston, representing a total of 100.5 million POPs, or approximately 62% of the NextWave footprint.

14. To support these efforts, NextWave secured in excess of $2 billion of vendor financing commitments

from major equipment vendors, such as Lucent Technologies, Hughes Network Sysems, Nortel Networks, and LG InfoComm, and entered into agreements to sell in excess of 35 billion minutes of use to telecommunications carriers such as MCI, which alone committed to purchase in excess of 10 billion minutes of use.

15. During the latter part of 1996 and early 1997, the market value of spectrum literally cratered. Starting in August 1996, the FCC auctioned an additional 1500 licenses concluding in early 1997. This flooding of the market led to dramatically depressed prices for licenses - less than 25% of the amounts bid in the C Block Auctions. Essentially overnight, C Block companies (including NextWave) went from being the "darlings" of Wall Street (over $1.6 billion in registration statements backed by major investment banks were on file) to the brink of insolvency.

16. When the NextWave's licenses were finally awarded in January 1997, the market was not willing to finance them. In his separate statement to the FCC's September 1997 restructuring order, former FCC Chairman Reed Hundt stated that he "was aware last December [1996] that the market was unlikely to finance many of the largest bidders." Thus, the Commission knew of the effect of its D, E and F auction on the new entrepreneurial companies' ability to raise financing prior to the time that it finally granted NextWave its licenses in January 1997.

17. By making its $500 million down payment to the FCC in January 1997, NextWave did so in full expectation of getting fully financed and honoring its original bid terms. At the time of the bids, NextWave expected that its licenses would be granted promptly and that spectrum values would not collapse. The

Company could not have anticipated, or planned, the delay in its license grants or the decline in spectrum values.

18. However, despite the PCS market crash, NextWave did not give up. From September 1997 through June 1998, the Company retained Prudential Securities, and engaged in extensive efforts to raise financing to fund one of the FCC's restructuring options. The Company proposed and discussed multiple footprint scenarios under the FCC options, ranging from 53 million POPs to 124 million POPs. The Company worked with at least six different major telecommunications players to try to derive a financial alternative.

19. At the same time that NextWave and other C block licenses were seeking to finance one of the proposed restructuring options, in March 1998 the FCC announced a deal in the Pocket bankruptcy that provided for a 60% reduction in the purchase obligation for licenses acquired by Pocket and the extension of the installment period to 12 years from 10 years. The market could not reconcile the disparity in treatments, and the FCC's willingness to accept payments at 40 cents on the dollar further eroded the markets assessment of spectrum values. Ultimately, each prospective investor contacted by NextWave and its investment bankers determined the market value of spectrum had simply fallen too low.

20. During this period, the Company entered into approximately 220 settlement agreements with various vendors and arranged for negotiated payments of over millions of dollars in outstanding obligations. As the Company's financial condition continued to deteriorate and early payments were missed, an increasing number

of creditors threatened or initiated litigation. Employees were asked to skip payroll on several occasions.

21. In February and March 1998 one of the Company's investors, Triumph Capital, made two emergency loans totaling $2 million. During February and March 1998, the Company's CEO advanced an additional $450,000. The Company ended February and March with available cash of $85,000 and $112,000 respectively.

22. Between March and October of 1997, the second and third largest C Block bidders filed for bankruptcy. NextWave, however, continued to try to find an alternative. Unlike those who declared bankruptcy in 1997, NextWave sought to stave it off and to continue to build-out its network. Only after fighting bankruptcy for many months, at the cost of millions of dollars to its officers and shareholders, did NextWave file Chapter 11 protection on June 8, 1998. NextWave did so for the same reason any other enterprise does so: to preserve its assets, reorganize, and emerge as a healthy entity. NextWave was forced to curtail its operations, lay off over 500 employees and contractors.

23. When a company files for bankruptcy, it loses all autonomy of operations. The Company becomes completely subject to the review and monitoring of the Court and the US Trustee. Its Board of Directors assumes the role of a trustee and must act as a fiduciary to all constituents. In bankruptcy, the Company's creditors assume an elevated role of involvement in the Company's affairs and activities due to their priorities over equity investors. NextWave, like any other company, had the strongest aversion to filing for Chapter 11 because of the complications and loss of control that accompany a bankruptcy filing. However,

once a company becomes insolvent, the Board of Directors has a fiduciary duty to protect the Company's assets, and bankruptcy is the process that Congress has created for companies to seek protection from creditors while it reorganizes its affairs.

24. At the time it sought protection under the Bankruptcy Code, NextWave had demonstrated its ability to acquire substantial sums of capital by raising over $600 million of working capital (of which $504 million was paid to the FCC) and by securing over $2 billion in financing from the Company's equipment vendors, and had built a world class organization of executives and employees from the wireless industry that, with the help of an additional 300 contractors, was fully engaged in the build-out and deployment of a wireless cellular telephone system in major cities across the country. NextWave had established exactly the type of business operation and resources that the Bankruptcy Code was designed to protect and preserve as it reorganized through a period of financial difficulty.

25. The FCC is the largest creditor in the NextWave bankruptcy and filed a claim in the bankruptcy for the full amount of the indebtedness. Under the bankruptcy laws, creditors are only allowed to receive the amount of their claim for which the Company received actual value. Creditors cannot claim a larger share of a company's assets based on inflated claims. Upon the filing of a petition for protection under the bankruptcy laws, NextWave assumed the statutory role of debtor-in-possession, charged with the responsibility to ensure that creditor claims are valid and represent amounts for which the Company received equivalent value. Concurrent with the filing of its bankruptcy petition, NextWave (following the pre-

cedent of General Wireless) commenced a fraudulent conveyance action against the FCC to challenge the FCC's claim. Pursuant to § 544 of the Bankruptcy Code, NextWave sought to have the amount of its debt to the FCC adjusted to the value of the licenses when the licenses were granted and the debt incurred.

26. From that point on, NextWave's bankruptcy proceeded on a dual track. NextWave litigated with the FCC on one front. On the other front, NextWave struggled to hold its business together to reorganize. Holding employees, negotiating a plan with creditors and raising financing for a plan were the major focus on the business side of the bankruptcy.

27. From the latter half of 1998 through the fall of 1999, NextWave litigated with the FCC. An extensive trial occurred before the bankruptcy court followed by an expedited appeal to first the District Court and then the Second Circuit Court of Appeals. While successful at the trial and first appellate level, in November 1999 the Second Circuit announced, without decision, that it was reversing the lower courts.

28. As a result of NextWave's extensive financing efforts, aided substantially by the recovery of market conditions, NextWave raised sufficient capital to pay in full for its Licenses emerge from bankruptcy, and proceed expeditiously to offer its PCS network to customers. On December 16, 1999, NextWave filed a modified plan of reorganization providing, *inter alia*, that all creditors, including the FCC, would be paid in full.

29. On December 22, 1999 the Second Circuit issued its opinion revealing that the ground for its reversal was, *inter alia*, that only the D.C. Court of Appeals had jurisdiction to review the FCC's regulatory actions.

30. On January 11, 2000, in effort to avoid further litigation, NextWave submitted an enhanced proposal to the FCC, offering to satisfy all present *and future* obligations to the FCC through a lump sum cash payment in excess of $4.3 billion upon confirmation of the plan.[1]

31. Notwithstanding NextWave's ability and willingness to satisfy its full bid price obligations, on January 12, 2000 - only one day after NextWave's lump sum offer, and a mere nine days before scheduled plan confirmation - the FCC objected to confirmation. The FCC asserted *for the first time* that NextWave's Licenses "automatically canceled" at an unspecified date more than a year before - a full eleven months prior to the Second Circuit's December 22 decision - ostensibly because NextWave had not made timely interest payments during the pendency of its bankruptcy case. The FCC issued that same day a Public Notice purporting to cancel and to designate for reauction NextWave's C and F Block licenses. If this FCC order is not reviewed prior to the scheduled reauction of NextWave's licenses on December 12, 2000, or is not stayed pending a final disposition of its legality, NextWave's business will face liquidation, causing irreparable injury.

32. The licenses at issue here represent NextWave's principal assets. Indeed spectrum licenses constitute the principal assets of any wireless company. Without such licenses, wireless companies cannot provide service to customers. Simply put, spectrum licenses are essential to the life of any wireless company, NextWave included. Thus, if NextWave loses its licenses, NextWave will be destroyed as a business. Failure to ensure review of the FCC's actions prior to the reauction, in this instance, is literally a corporate death penalty. No greater harm to a company is possible.

[1] The $4.3 billion payment, together with the $505 million of license payments already made by NextWave, includes interest-on-interest and would total in excess of $4.8 billion, making it the largest payment ever made by a company to the United States government for any spectrum auction held to date.

33. In addition, absent prompt review or a stay of the FCC's order, NextWave will be at serious risk of failing to achieve the financing necessary to continue its business. Nor will NextWave be able to retain the personnel and expertise essential to its business operations. Thus, the Company will face liquidation without ever receiving the opportunity to litigate fully its claims against the FCC.

34. Other parties will be harmed as well by the destruction of NextWave's business—its investors, employees, creditors, and customers. If a stay of the FCC's order is not granted, NextWave's investors and creditors, will be at serious risk of forfeiting most, if not all, of the more than $600 million dollars in debt and equity they invested in the Company, and NextWave's employees will lose their livelihoods. In addition, the Company's lead post-petition lender, D&P NextWave Partners, L.P. ("DIP lender"), which invested approximately 35 million dollars in NextWave to enable NextWave's business operations to continue, will face a serious risk of not being repaid if NextWave's licenses are revoked.

35. The injury to NextWave and the larger community is particularly stark here. NextWave has filed a plan of reorganization and assembled in excess of $5 billion of financing, which will allow it to pay all of its creditors in full, including the FCC, and emerge from

bankruptcy. NextWave is poised to pay its creditors and emerge from bankruptcy once the FCC's efforts to seize NextWave's licenses cease. If the FCC's re-auction is permitted to go forward and NextWave loses its licenses, however, Nextwave's promising Chapter 11 reorganization will fail, resulting in a liquidation. NextWave's creditors, who would have otherwise received ample compensation for their claims for their claims, will get little or nothing.

36. In addition, the general public would also benefit from issuance of a stay. In directing the FCC to design a system of competitive bidding for spectrum licenses, Congress emphasized that the public interest demanded "the development and rapid deployment of new technologies" and the "efficient and intensive use of the electromagnetic spectrum." 47 U.S.C. § 309(j)(3). NextWave, which has already completed much of the necessary network design and preparation, is in a position to fulfill the congressional goal of prompt and efficient use of the spectrum.

37. Finally, during the period between NextWave's filing for bankruptcy and the FCC's January 12, 2000 order, the FCC took numerous actions that confirm its understanding that its own regulations did not require NextWave to make installment payments while in bankruptcy. Most importantly, throughout the NextWave bankruptcy proceedings, the FCC repeatedly assured NextWave and its creditors in court filings and in court statements that NextWave would be protected from collection of its C block license obligations while it reorganized its business. Further, despite the FCC's issuance of revised C Block promissory notes to licensees, and its general practice of sending PCS licensees quarterly payment notices—which, among other things,

specify the balance due on the debt and the amount of payment to be made, and remind the parties of the timing of their payment obligations—the FCC never sent NextWave any such revised notes or notices of upcoming payments after NextWave filed for bankruptcy on June 8, 1998.

38. NextWave and its investors and creditors relied to their detriment on the FCC's representations that the automatic stay applied to the FCC until it was lifted and that NextWave's licenses had not cancelled. In addition, the DIP lender relied on the FCC's representations in agreeing to advance an additional $10 million of post-petition financing to NextWave, which was approved by the bankruptcy court on November 16, 1999 (almost 11 months after the FCC now claims NextWave's licenses purportedly cancelled). Quite simply, NextWave and its investors and creditors have acted in justifiable reliance on the FCC's representations that the licenses had not cancelled—justifiable reliance that will be betrayed if the FCC's order purporting to cancel the licenses is not stayed.

39. Throughout the course of its reorganization efforts, NextWave strictly adhered to the dictates of applicable federal law, relying on the protections provided under federal bankruptcy statutes, the representations of the FCC in federal courts, and the rulings of federal courts, in the discharge of its payment obligations to the FCC and the Company's other creditors. After filing its bankruptcy case, NextWave was required under applicable bankruptcy law to suspend all payments to creditors, including payments to the FCC. The Bankruptcy Code in fact prohibits a debtor from making payments on pre-petition claims to a select creditor or creditors without specific judicial authori-

zation. NextWave was in fact advised of this by the bankruptcy court having jurisdiction over our case: "any unauthorized post-petition payments to the FCC on account of its pre-petitioner claim would be avoidable at the instance of the debtors or other creditors as an unauthorized post-petition transfer under Section 549."

40. Having taken the position that NextWave's licenses would not cancel because of any failure to make a payment that the Bankruptcy Code prohibits, the FCC altered its position after the fact and claimed that NextWave's licenses had, in fact, cancelled for non-payment after all. The Company was ambushed by the FCC's stunning reversal. The FCC's announcement that NextWave's licenses would be cancelled for non-payment of interest during the bankruptcy came for the first time nearly 30 days after the Company submitted a plan of reorganization that would pay the FCC obligations in full. NextWave was never given a chance to cure its obligations. The Company could not be expected to do anything different than comply with federal statutes in exercising its duties and obligations. Yet the FCC seeks to retroactively destroy NextWave for this compliance.

41. The FCC was unambiguous in its declarations that NextWave would be able to pursue reorganization under the bankruptcy laws. In reliance on those assurances and meeting the goals and purposes of the bankruptcy code, NextWave has successfully reorganized its business and filed a plan of reorganization under which NextWave assembles in excess of $5 billion of financing. This plan allows the Company to pay all of its creditors in full, including the FCC, and enables the Company to emerge from bankruptcy to buildout its wireless

networks and bring commercial service to consumers. The plan preserves jobs, preserves assets, rehabilitates the business, and pays all creditors in full. Few bankruptcies achieve such a result of full satisfaction of all creditors – the Bankruptcy Code is designed to protect and foster the opportunity to achieve such a result.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Sept. 19, 2000.

/s/ FRANK A. CASSOU
FRANK A. CASSOU

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

98 B 21529 (ASH)
Chapter 11

IN RE: NEXTWAVE PERSONAL COMMUNICATIONS, INC., ET AL., DEBTORS

Hearing Date: January 21, 2000
11:00 a.m.

OBJECTION OF FEDERAL COMMUNICATIONS COMMISSION TO DEBTORS' MODIFIED FIRST AMENDED JOINT PLAN OF REORGANIZATION

The Federal Communications Commission ("FCC") respectfully objects to the Modified First Amended Joint Plan of Reorganization ("Modified Plan") proposed by debtors NextWave Personal Communications, Inc., *et al.* ("Debtors"), in the above-captioned, jointly administered bankruptcy case. The Modified Plan cannot be confirmed because it is predicated upon the Debtors retention of C and F block Personal Communication Services ("PCS") spectrum licenses, which, in 1997, the FCC granted to NextWave Personal Communications, Inc. ("NPCI") and NextWave Power Partners, Inc. respectively. As a consequence of the Debtors' failure to comply with the terms and conditions of those authorizations, however, the Debtors' C and F block PCS licenses automatically canceled no later than January 1999.* Annexed hereto as Exhibit A is a copy of the Public Notice released by the FCC on January 12, 2000, reflecting the automatic cancellation of the Debtors' C and F block PCS licenses.

* * * * *

In light of the Second Circuit's ruling, it is clear that the Debtors' C and F block PCS licenses automatically canceled pursuant to the terms and conditions upon which they were granted. Given that a licensee's failure to comply with a license's full and timely payment condition automatically results in the termination of a spectrum authorization, requiring no affirmative steps by the FCC, *see* 47 C.F.R. § 1.2110, and because the events of regulatory default occurred in this case after the Debtors filed their bankruptcy petition, the automatic stay provisions of the Bankruptcy Code, 11 U.S.C. § 362, are not implicated by the cancellation of the Debtors' C and F block PCS licenses.

* * * * *

* The applicable terms and conditions of the licenses are set forth in, and established by, 47 C.F.R. §§ 1.2110, 24.711, and the FCC's ruling *In the Matter of Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Order on Reconsideration of Second Report and Order*, 13 F.C.C. Rcd. 8345 (Mar. 24, 1998), 1998 WL 130176 (F.C.C.); *In the Matter of Requests for Extension of the Commission's Initial Non-Delinquency Period for C and F Block Installment Payments*, 13 F.C.C. Rcd. 22071 (Oct. 29, 1998), 1998 WL 754808 (F.C.C.) ("*Non-Delinquency Order*"); and *Order on Reconsideration of the Non-Delinquency Order*, 14 F.C.C. Rcd. 6080 (April 2, 1999), 1999 WL 181805 (F.C.C.).

Dated: New York, New York
January 12, 2000

MARY JO WHITE
United States Attorney for the
Southern District of New York
Attorney for Federal Communications
Commission

By: /s/ DANIEL S. ALTER

DANIEL S. ALTER (DA-7158)
Assistant United States Attorney
100 Church Street, 19th Floor
New York, New York 10007
Tel. No.: (212) 637-2741

[SEAL OMITTED]

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 9, 1997

The Honorable W.J. (Billy) Tauzin
Chairman
Subcommittee on Telecommunications,
Trade, and Consumer Protection
Committee on Commerce
U.S. House of Representatives
316 Ford House Office Building
Washington, D.C. 20515-6115

Dear Chairman Tauzin:

I am writing regarding the Committee draft of the proposed Reconciliation legislation. I applaud your efforts to undertake the extremely difficult task of reconciling budget and telecommunications policy. We have provided preliminary comments to your staffs. I would like to take this opportunity, however, to comment on a few specific provisisions.

First, the draft requires the commission to identify 100 megahertz of new spectrum below 3 GHz for auction. Our engineers, in an extended effort, have been unable to identify that amount of spectrum below 3 GHz which could be auctioned for significantly more valuable uses, including the cost of relocation of incumbent licensees. Even if the 45 MHz between 1710-1755 Mhz that is identified in the Committee's draft can be counted towards the 100 MHz by accelerating its assignment to commercial users, I am concerned that it

will be extremely difficult for the FCC to identify an additional 55 megahertz of spectrum.

Second, in the provision that would cease analog television service by 2007, the requirement that the Commission grant extensions in markets where more than 5 percent of households still rely on over-the-air analog signals will increase uncertainty, undermine incentives for the rapid deployment of digital television, and result in inefficient licensing of the analog spectrum. The uncertainty created by such mandatory license extensions could discourage potential future users from bidding for this spectrum. In this regard, it is essential to establish a date certain by which future licensees can plan to have use of the analog channels targeted for return. Our goals of efficient spectrum management would be undermined by indefinitely tying up spectrum held by analog licensees.

Third, the provision in the draft giving the Commission the option of allocating "up to" 24 megahertz of spectrum, as opposed to directing the Commission to allocate the full 24 megahertz of spectrum to public safety entries, is contrary to the well-established need identified by the Public Safety Wireless Advisory Committee (PSWAC). As you know, the Public Safety community has identified very serious short and long term spectrum needs. By providing for allocation of less than the full 24 MHz of spectrum between channels 60-69 for public safety, the draft potentially undercuts the spectrum needs identified by the PSWAC. The legislation should specify that the Commission reallocate 24 MHz for public safety.

I would also like to recommend some additional provisions that should be considered for inclusion in the final version of this legislation. First, in order to protect

the government's interest in spectrum licenses, it would be good to give the Commission explicit authority to revoke and reauction licenses held by firms that have gone into bankruptcy. The Commission should be given the explicit authority to revoke and reauction licenses notwithstanding the automatic stay provisions of the bankruptcy code. We are developing language, which we would be happy to share. Second, the spectrum reallocated from federal users should be limited to spectrum that is currently allocated on an exclusive basis for federal use. Shared or heavily encumbered spectrum is of much less value for the development of new commercial services. Third, spectrum to be transferred from federal users needs to be available for non-government use on an exclusive basis. Fourth, in order to speed the development of spectrum by non-government users, the bill should permit the direct reimbursement of displaced Federal users in a manner similar to the reimbursement private relocated users receive, and require federal users to vacate the spectrum if provided equivalent replacement capability.

As this measure progresses, I look forward to working with you and your staff on these and other concerns so that a bill can be fashioned that truly serves the public interest regarding spectrum policy.

Sincerely,

/s/ REED HUNDT
REED HUNDT
Chairman

cc: The Honorable Tom Bliley, Chairman, Committee on Commerce
The Honorable John D. Dingell, Ranking Minority Member, Committee on Commerce
The Honorable Edward J. Markey, Ranking Minority Member, Subcommittee on Telecommunications, Trade, and Consumer Protection

[SEAL OMITTED]

FEDERAL COMMUNICATION COMMISISION
Washington, D.C. 20554

September 3, 1999

Cady Thomas
Office of the Honorable Senator Jesse Helms
403 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Ms. Thomas

I am writing in reply to Senate Helms' letter to Sheryl J. Wilkerson of the Federal Communications Commission on June 30, 1999, forwarding a letter from Urban Communicators PCS Limited Partnership ("UrbanComm").

As UrbanComm's letter reflects, that firm is now in litigation with the FCC in bankruptcy court in the Southern District of New York. In light of the pending litigation, it would not be appropriate for the FCC to respond to the statements made by UrbanComm about the merits of the litigation, except to say that the FCC has filed a motion to dismiss the litigation that is now pending before the bankruptcy court.

UrbanComm's letter also expresses concerns about Section 618 in S. 1217, which has passed the Senate, Cong. Rec. S9434 (July 27, 1999), and is now awaiting conference. Section 618 would amend Section 309(j) of the Communications Act, which authorizes the FCC to use competitive bidding for the assignment of radio spectrum.

Subparagraph (i) of the amendment assures that the FCC will be able to enforce its existing spectrum auction regulations enabling the FCC to recover licenses for a new auction if a licensee fails to meet its installment payment obligations.

Subparagraph (ii) allows the FCC to avoid the jurisdictional and administrative burden associated with obtaining a perfected security interest under state law for each FCC license for which installment payments are owed.

Subparagraph (iii) makes Section 618 retroactive to include all pending cases that are non-final decisions (*i.e.*, subject to further appellate review in the courts.)

This proposal has been included in the last two budget submissions by the President and is supported by the Department of Justice. The purpose of Section 618 is to protect the interest of the American taxpayers. It assures that companies which are awarded FCC licenses at a competitive auction pursuant to Section 309(j) will in fact pay their winning bid amounts, and will not be able to use the bankruptcy courts to reduce their promised payments to the United States Treasury.

A licensee that is not in default will not be affected by Section 618. Nor will Section 618 affect licensees that are in bankruptcy but which do not seek to use the Bankruptcy Code to reduce their payment obligations to the Treasury.

An FCC license is a valuable public asset that is entrusted to licensees to use in the public interest. If licensees are permitted to use Bankruptcy Code or other state or federal laws to avoid the amount they bid

while retaining the license, then the FCC auction process created by Congress in Section 309(j) cannot function as Congress envisioned. *Section 618 does not give new regulatory powers to the FCC, but only assures that existing regulations will be applied fairly to all licensees.*

Legislation protecting the interests of the United States as a creditor in bankruptcy cases is not unusual. Congress has enacted many specific provisions protecting other important governmental lending and licensing programs in bankruptcy court:

- debts for repayment of Health Education Assistance Loans – 42 U.S.C. § 2921(g);
- debts for repayment of special retention pay for medical and dental military officers that do not fulfill their service - 37 U.S.C. § 302;
- HUD mortgages - 11 U.S.C. § 362(b)(8);
- ship mortgages held by the Secretary of Commerce or Secretary of Transportation under the Merchant Marine Act - 11 U.S.C. §§ 362 (b)(12) & (13);
- debts for taxes and customs duties - 11 U.S.C. §§ 523 (a)(1) and 523 (a)(14)
- licensure of educational institutions - 11 U.S.C. §§ 362 (b)(14) & (15);
- financial commitments to a Federal depository institution's regulatory agencies (*e.g.* FDIC, OTS) to maintain the capital of an insured depository institution - 11 U.S.C. §§ 365 (o) and 507(a)(9);

- governmental exercise of police and regulatory powers - 11 U.S.C. §§ 362 (b)(4).

Finally, UrbanComm's letter questioned the constitutionality of the retroactivity provision of Section 618. The Supreme Court has stated that Congress can constitutionally make legislation apply retroactively to pending cases, including cases on appeal. *Plaut v. Spendthrift Farms, Inc.*, 514 U.S. 211 (1995). The retroactivity provision of Section 618 is drafted to conform to the limits set forth by the Supreme Court.

I trust that this response will answer the inquiry from your Office.

Very truly yours,

/s/ CHRISTOPHER J. WRIGHT
CHRISTOPHER J. WRIGHT
General Counsel

[SEAL OMITTED]

ONE HUNDRED SIXTH CONGRESS
CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
2135 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20315-8218
[NAMES AND ADDRESSES OMITTED]

May 12, 2000

The Honorable J. Dennis Hastert
The Speaker
U.S. House of Representatives
H232, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

We are writing to express opposition to any effort to include legislation as part of the appropriations process that would - in effect - supersede the Bankruptcy Code and give the Federal Communications Commission special protections with respect to the treatment of certain spectrum licenses.

The Commercial and Administrative Law Subcommittee's April 11th hearing examined the FCC's contention that it is exempt from the automatic stay provision under section 362(b) of the Bankruptcy Code. Every member of the subcommittee present at the hearing expressed his concern or disagreement with the FCC's position that it is exempt from the automatic stay provision – a position contrary to congressional intent when it enacted section 362(b) in 1997.

As you may recall, the FCC has sought such legislative protection as part of the appropriations process since 1997. Proposed statutory language, for example, was included in the Administration's fiscal year 1999 and 2000 budget requests, and appeared in the Senate version of the Commerce, Justice, State, the Judiciary and related agencies appropriation bill for fiscal year 2000.

Based on jurisdictional and procedural grounds, we, the undersigned, have repeatedly objected to these prior legislative efforts. These prior proposals present serious substantive concerns. They conflict with one of the Bankruptcy Code's fundamental tenets that all similarly situated creditors be treated equally, absent significant public policy reasons warranting some form of preferred treatment (e.g., police and regulatory enforcement officials, spousal and child support claimants, victims of fraud). These proposals, however, would endow the FCC with more protections than virtually any other creditor, including the Internal Revenue Service, has under current bankruptcy law. They would exempt the FCC from the Bankruptcy Code's automatic stay provision, a provision to which the FCC is subject. If enacted, this proposed legislation could potentially destroy a debtor's prospect for economic rehabilitation and deprive creditors of a major source of repayment.

Notwithstanding the extraordinary ramifications of these FCC proposals, no compelling public policy has been articulated justifying such radical legislative relief. While governmental agencies (including the FCC) have issued statements citing anticipated pecuniary benefits of the legislation, these estimates are difficult to assess. In addition, any arguable financial

benefit of course must be carefully considered given the harm to other creditors that could result from enactment of this legislation.

For these reasons, we oppose the inclusion of such proposed legislation or any similar provision giving the FCC an exemption from the automatic stay provision by amending section 362(b), which does not exempt the FCC despite its claims to the contrary.

Sincerely,

/s/ HENRY J. HYDE
HENRY J. HYDE
Chairman

/s/ JOHN CONYERS, JR.
JOHN CONYERS, JR.
Ranking Member

/s/ GEORGE W. GEKAS
GEORGE W. GEKAS
Chairman, Subcommittee on Commercial and Administrative Law

/s/ JERROLD NADLER.
JERROLD NADLER
Ranking Member
Subcommittee on Commercial and Administrative Law

cc: The Honorable Richard K. Armey
The Honorable Richard A Gephardt
The Honorable C. W. Bill Young
The Honorable David R. Obey
The Honorable Harold Rogers
The Honorable Jose E. Serrano

[SEAL OMITTED] August 7, 1998

Ms. Magalie Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Rm. 222
Washington, DC 20554

Re: Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Service (PCS) Licenses WT Docket No. 97-82

Dear Ms. Salas:

Two of NextWave Telecom Inc.'s ("NextWave" or the "Company") subsidiaries were successful bidders in the Commission's C-block and D, E, and F-block auctions. As a result of the C-block auction and a subsequent licensing proceeding, NextWave Personal Communications Inc. ("NPCI") is a C-block PCS licensee in 63 Basic Trading Areas ("BTAs"). As a result of the D, E, and F-block auction and a subsequent licensing proceeding, NextWave Power Partners Inc. ("NPPI") is a D, E, and F-block PCS licensee in 32 BTAs. As the Commission is aware, NextWave has been attempting to arrange financing to complete the build out of these licenses.

On September 25, 1997, the Commission adopted its *Second Report and Order* in WT Docket No. 97-82, which reinstated broadband PCS C and F Block installment payments and, *inter alia*, provided C block licensees with certain "restructuring" options.[1] On March 24, 1998, the Commission released its *Order on Reconsideration* of the order, which modified those options.[2] Pursuant to the *Order on Reconsideration*, June 8, 1998, was established as the deadline for receiving notifications by C-block licensees of which restructuring options they decided to elect (an "Election"). Subsequently, the FCC Wireless Telecommunications Bureau (the "Bureau") has permitted certain licensees to resubmit Elections that the Bureau determined were defective.[3] The Bureau also has granted various requests filed after June 8, 1998, concerning compliance with the June 8th notification deadline.[4]

On June 8, 1998, NPCI and NPPI, along with NextWave Partners Inc. and NextWave Wireless Inc. (the "Debtors") commenced chapter 11 cases in the United States Bankruptcy Court for the Southern District of New York, *see in re NextWave Personal Communication Inc.*, No. 98 B 21529 (ASH), and filed actions

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[1] *See* Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, *Second Report and Order*, 12 FCC Rcd 16,436 (1997) ("*Second Report and Order*").

[2] *See* Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, *Order on Reconsideration of the Second Report and Order*, WT Docket No. 97-82, 1998 FCC Lexis 1628, 63 Fed. Reg. 17111 (April 8, 1998) ("*Order on Reconsideration*").

[3] *See* PUBLIC NOTICE, Wireless Telecommunications Bureau Announces Broadband Personal Communications Service C Block Elections, DA 98-1168, released June 16, 1998, at 2.

[4] *See, e.g.*, Letter from Chief, Wireless Telecommunications Bureau, to Mr. Tyrone Brown, Senior Vice President, ClearComm L.P., DA 98-1525, released July 31, 1998 (waiver granted to permit licensee to change and resubmit its initial Election).

against the FCC for, *inter alia*, fraudulent conveyance of NPCI's C-block licenses.

The current status of the bankruptcy cases materially affects NPCI's ability to make a meaningful Election, and precludes such an Election from being made at this time. Applicable bankruptcy laws afford protections that extend the date for making an Election. Pending resolution of the reorganization proceedings, the Company has a fiduciary duty to preserve its rights and the value of its estate. Accordingly, NPCI hereby reserves the right to make an Election at the appropriate time in the future.

Respectfully submitted.

NEXTWAVE TELECOM, INC.

/s/ MICHAEL R. WACK
MICHAEL R. WACK
V.P. Regulation
NextWave Telecom Inc.
1101 Pennsylvania Ave., N.W.
Suite 805
Washington, D.C. 20004
(202-347-2771)(voice)
(202-347-2822)(facsimile)

cc:

Daniel Phythyon Jasmine Poltronieri David Horowitz
Kathleen Ham Sandra Danner Stewart Block

[SEAL OMITTED]

Federal Communications Commission
Washington, D.C. 20554

September 2, 1998

Michael R. Wack
V.P. Regulation
NextWave Telecom Inc.
1101 Pennsylvania Ave., N.W.
Suite 805
Washington, DC 20004

Dear Mr. Wack:

We have received your letter dated August 7, 1998, submitted on behalf of NextWave Telecom Inc. ("NextWave Telecom"). In the letter, you state that NextWave Personal Communications Inc., ("NPCI"), a subsidiary of NextWave Telecom, reserves the right to make an election regarding the 63 C Block PCS licenses that NPCI holds. By way of explanation, your letter invokes the ongoing bankruptcy proceedings in which the NextWave companies are embroiled, as well as protections in the form of an extended election deadline that applicable bankruptcy laws purportedly afford.

Please be informed that rights to make an election are set forth in the Commission's *Second Report and Order and Further Notice of Proposed Rule Making* in WT Docket No. 97-82, 12 FCC Rcd 16,436 (1997), *as modified by Order on Reconsideration of the Second Report and Order*, FCC 98-46 (released Mar. 24, 1998.) We are unaware of any provision in the federal Bankruptcy Code or other statute, which, at this time,

precludes application of the Commission's election requirements to NPCI.

Sincerely,

/s/ DANIE B. PHYTHYON
DANIEL B. PHYTHYON
Chief, Wireless
Telecommunications Bureau

cc: Christopher J. Wright
General Counsel

Kathleen O'Brien Ham
Deputy Chief, Wireless Telecommunications Bureau

Amy Zoslov
Chief, Auction & Industry Analysis Division
Wireless Telecommunications Bureau